

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 09-13
Z.C. Case No. 09-13
(Text Amendment – 11 DCMR)
BZA Expedited Review Procedures
March 22, 2010

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 799; D.C. Official Code § 6-641.07); hereby gives notice of adoption of the following text amendments to the Board of Zoning Adjustment Rules of Practice and Procedure, Chapter 31 of DCMR Title 11. A Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on February 5, 2010, at 57 DCR 1270. The amendments shall become effective upon the publication of this notice in the *D.C. Register*.

Description of Amendments

The amendment adds a new § 3118 to allow the Board of Zoning Adjustment (the “Board” or “BZA”) to decide certain types of applications without a hearing, if the applicant waives that right, and if certain persons or entities do not object. A conforming amendment is also made to § 3113.1.

Procedures Leading to Adoption of Amendments

The District of Columbia Office of Planning (“OP”) submitted a memorandum dated July 17, 2009 that served as a petition requesting the amendments. The Commission voted to set down the proposal for hearing at its July 27, 2009 public meeting.

Notice pursuant to § 13 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000 (“ANC Act”), effective June 27, 2000 (D.C. Law 13-135, D.C. Official Code § 1-309.10), was given to all Advisory Neighborhood Commissions. The Commission received two ANC reports from ANCs 6B and 6C, which will be discussed *infra*.

A public hearing was scheduled for and held on October 26, 2009, after which the Commission authorized publication of a notice of proposed rulemaking in the *D.C. Register*.

Although the Commission is not required to refer amendments to the BZA's rules of procedures to the National Capital Planning Commission ("NCPC"), a courtesy referral of the amendment was made and NCPC, through a delegated action dated January 28, 2010, found that the proposed text amendments would not adversely affect the identified federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit No. 20.)

The Notice of Proposed Rulemaking was published in the *D.C. Register* on February 5, 2010, 57 DCR 1270, for a 30-day notice and comment period. No comments were received.

At a properly noticed March 22, 2010 public meeting, the Commission took final action to adopt the text amendments, without making any change to the proposed text: Prior to doing so, the Commission, as part of its deliberations, gave great weight to the issues and concerns expressed by ANCs 6B and 6C as required by § 13 (d)(3) of the ANC Act, D.C. Official Code 1-309.10 (d)(3). That provision indicates that great weight "requires acknowledgement of the [Advisory Neighborhood] Commission as the source of the recommendations and explicit reference to each of the Commission's issues and concerns."

ANC 6B indicated that it supported an expedited review process if it: (1) permitted non-controversial cases to be decided without a hearing; (2) guaranteed that a hearing would be held whenever an affected ANC, Councilmember, abutting resident or other party objected; and (3) provided workable deadlines for such persons and entities to pose objections. ANC 6C requested that ANCs receive notice whenever an expedited application "is posted".

The Commission indicated that the text, as revised after the hearing, met these concerns. The two types of applications eligible for expedited review are rarely controversial and no other type of applications can be considered unless these rules are amended. Affected ANCs, Councilmembers, and residents will be given an opportunity to object, and a hearing will be held if the BZA Chair determines that the objector's testimony will be relevant. The rules ensure that an affected ANC will receive notice of an expedited review in the same notice that starts its 30-day review period under the ANC Act. The deadline for making objections is the same deadline for requesting party status in an application. A decision to object involves virtually that same considerations as a decision to request party status, and so this timeframe is reasonable.

Having met all of the procedural prerequisites to taking final action, the Commission adopts the following amendments.

DCMR Title 11, ZONING, Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended as follows:

1. Section 3113, PRE-HEARING PROCEDURES FOR APPLICATIONS, § 3113.1 is amended by inserting the phrase "and to applications processed under the expedited review procedures to the extent specified in § 3118", so that the subsection will read as follows.

3113.1 The rules of procedure in this section apply to all applications filed with the Board (including applications filed pursuant to §§ 3107 and 3108 in effect prior to October 1, 1999, and §§ 3103 and 3104); provided, however, the provisions of this section only apply to chancery applications to the extent specified in § 3134 and to applications processed under the expedited review procedures to the extent specified in § 3118.

2. A new § 3118, EXPEDITED REVIEW, is added to read as follows:

3118 EXPEDITED REVIEW

3118.1 The purpose of this section is to create an expedited review process to be followed after an applicant waives its right to a hearing for an eligible application.

3118.2 An eligible application is an application for:

- (a) An addition to one-family dwelling or flat or new or enlarged accessory structures pursuant to § 223; or
- (b) A park, playground, swimming pool, or athletic field pursuant to § 209.1.

3118.3 Subject to the removal process described in §§ 3118.6 and 3118.7, an eligible application that includes a waiver of hearing will be placed on an expedited review calendar and decided without hearing at the Board's next regularly scheduled session after:

- (a) The completion of the public notice procedures set forth in § 3118.4; and
- (b) The completion of the ANC review period of thirty (30) days from the date it receives notice of the application, excluding Saturdays, Sundays, and holidays, plus an additional fourteen (14) calendar days.

3118.4 Notice of expedited review shall be given in the same manner and include the same information as required by §§ 3113.12 through 3113.16, except that references to "public hearing" or "hearing" shall mean "expedited review" and all other requirements of § 3113 shall apply with the same proviso.

3118.5 The public notice of an expedited review and the ANC notice of an application requesting expedited review shall also indicate:

- (a) The procedure for requesting the removal of the application from the expedited review calendar is as described §§ 3118.6 and 3118.7; and
- (b) That the only public notice of the hearing date for a removed application will be the posting of that date in the Office of Zoning beginning on the date that the application was removed and continuing until the date of such hearing.

3118.6 An application tentatively placed on an expedited review calendar will be removed and rescheduled for a hearing:

- (a) At the oral or written request of a Board member made at any time prior to the vote on the application;
- (b) Upon the receipt of a timely filed request for party status in opposition to the application; or
- (c) At the written request of the following persons or entities, if filed with the Office of Zoning no later than fourteen (14) days prior to the date that the expedited review is scheduled:
 - (1) The Office of Planning;
 - (2) The affected ANC(s) or affected Single Member District(s);
 - (3) The Councilmember representing the area in which the subject property is located or representing an area located within two-hundred feet (200 ft.) of the subject property; or
 - (4) The owner or occupant of any property located within two-hundred feet (200 ft.) of the subject property.

3118.7 A request to remove made pursuant to § 3118.6 (c) (2) through (4) shall be accompanied by a statement indicating that the requester, or the requester's representative, intends to appear as a witness at the hearing and shall also include a summary of the testimony to be given at that time.

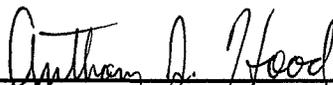
3118.8 The Chair may deny a request to remove an application if the proffered testimony is irrelevant.

3118.9 Orders granting an application approved by expedited review need not contain findings of facts or conclusions of law, but shall reflect the nature of the relief granted and any conditions imposed.

On January 25, 2010, upon motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **APPROVED** the petition at the its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve).

On March 22, 2010, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is on April 16, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 09-13

As Secretary to the Commission, I hereby certify that on April 13, 2010 copies of this Z.C. Notice of Final Rulemaking & Order No. 09-13 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|---|
| 1. <i>D.C. Register</i> | 5. DDOT (Karina Ricks) |
| 2. All ANC Chairpersons – see attached list | 6. Melinda Bolling, Acting General Counsel
DCRA
1100 4 th Street, S.W.
Washington, DC 20024 |
| 3. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 7. Office of the Attorney General
(Alan Bergstein) |
| 4. All Councilmembers – see attached list | |

ATTESTED BY:

A handwritten signature in cursive script, appearing to read "S. S. Schellin", is written over a horizontal line.

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

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The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.